

5

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.82/2002

New Delhi this the 4th day of July, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Shri Bana Bihari Tarei
S/o Shri Kshetra Mohan Tarei
R/o C-7/53, Safdarjung Development Area
New Delhi-110 016. Applicant

(In person)

-versus-

Union of India through:
Secretary to Government of India
(Foreign Secy.)
Ministry of External Affairs (Vigilance Unit)
South Block
Central Secretariat
New Delhi. ... Respondent

(By Shri A.K.Bhardwaj, Advocate)

O R D E R (ORAL)

S.A.T.Rizvi:-

Two different charge-sheets were served on the applicant, one on 2.1.1991 and the other on 3.9.1992. In respect of the first charge-sheet, after disciplinary proceedings, a penalty of compulsory retirement from service was imposed on the applicant vide order dated 9.2.1999. According to the applicant, a Writ Petition filed against the aforesaid penalty is pending in the Delhi High Court. The other charge-sheet dated 3.9.1992

2

relates to the present OA. In the departmental proceedings initiated in respect of this ^tlater charge-sheet, a penalty of 50% cut in pension on a permanent basis and 50% forfeiture of gratuity has been imposed on the applicant by the disciplinary authority by his order dated 14.12.2001 (Annexure A). No appeal could be preferred against the aforesaid penalty as the aforesaid order has been passed in the name of the President. The applicant though entitled for review has not filed any review petition before the appropriate authority. He has also not filed any revision petition.

2. The aforesaid order Annexure A has been challenged in the present OA on merits as well as on the ground that there has been an abnormal delay on the part of the disciplinary authority in passing the aforesaid order of penalty. Yet another ground taken by the applicant is that the enquiring authority appointed in the disciplinary proceedings was an officer junior to him in status and, therefore, in terms of Government of India decision contained in DOP&T OM dated 6.1.1971 reproduced under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, the report of the said authority has been vitiated.

7

3. The learned counsel appearing on behalf of the respondent has drawn our attention to the order passed by this Tribunal in OA No.807/1999 on 22.12.2000 (Annexure R-14) which was filed by the same applicant against the aforesaid order of his compulsory retirement to contend that the issues concerning delay and the appointment of enquiring authority junior ⁱⁿ ~~to~~ status compared to the applicant himself have already been dealt with by a Division Bench of this Tribunal which has negatived both the pleas ^{also} raised by the applicant in the present case. We have perused the aforesaid judgement. Paragraphs 8 & 10 thereof which are relevant for our purpose are reproduced below:-

"8. The first ground taken by applicant's counsel are that of delay in concluding the proceedings. The reasons for the time taken in concluding the proceedings are explained by respondents in Para 5(xv) of their reply. From their averments it is clear that respondents wanted to be absolutely certain before imposing any penalty. When the allegations themselves are as serious as in the present case, delay by itself is not sufficient ground to warrant judicial interference particularly when the delay has been adequately explained.

"10. It was next urged that the E.O. was lower in status and junior to applicant. Respondents in their reply state that Shri Neelakantan was appointed as Commissioner Departmental Inquiry by the Central Vigilance Commission. CDI of CVC are drawn from various services, generally of the rank of Director, function in a quasi-judicial capacity and as such their status in the Government hierarchy is not material. It is averred that the DOPT's instructions dated 6.1.71 to the effect that the inquiry should be conducted by an officer who is sufficiently senior to the charged officer would be relevant when the I.O. is

2

appointed from within the department of the charged officer. There is merit in this contention, and applicant has not succeeded in establishing that any prejudice was caused to him by Shri Neelakantan acting as the I.O. Hence this ground is also rejected."

The charges levelled against the applicant in the present OA are of a serious nature and, therefore, the delay which has taken place cannot be allowed to stand in the way of the departmental authorities proceeding against him. This is what has been held by the Division Bench in para 8 reproduced above also.

In relation to the other issue regarding the status of the enquiring authority, the plea adopted by the Division Bench in the aforesaid case is that the enquiring authority though junior to the applicant in that case in status did not belong to the same department and, therefore, even junior officer could validly be appointed as enquiring authority. Moreover, the applicant has not placed before us any facts to show that the report of the enquiring authority was a prejudiced report merely because the enquiring authority was a junior officer. He in fact belonged to the Central Vigilance Commission. In the circumstances, we cannot give weight to the Government of India's decision contained in the aforesaid Office Memorandum of 6.1.1971 and hold that neither of these pleas raised by the applicant are tenable.

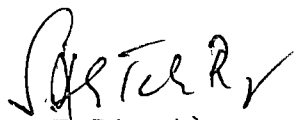
3. In so far as the merits of the case are concerned, we have with the help of the applicant


as well as the learned counsel appearing on behalf of the respondents gone through the report of the enquiring authority as well as the orders passed by the disciplinary authority. We have in particular perused the findings recorded by the enquiring authority in respect of IVth article of charge which deals with the employment of an India based servant by the applicant while he was posted in Moscow. It appears that he first wanted to engage one Ms. Pillay as India based servant and proceeded to seek the requisite clearance in the matter in accordance with the rules and instructions by approaching the PA-I Section of the Ministry of External Affairs (MEA). He did not pursue that proposal, however, and ^{2 cooled} ~~putted~~ off for unknown reasons even though a letter was issued by the PA-I Section asking him to furnish certain information in that respect. Subsequently, he appears to have engaged one Shri M.P. Sukumar as his India based servant and had admittedly kept on drawing the admissible allowance from month to month. However, on this occasion, he miserably failed to approach the PA-I Section of the MEA for requisite clearance. In our judgement, the aforesaid circumstances have correctly been relied upon by the enquiring authority as well as by the disciplinary authority for holding the applicant guilty of article IV of the charge. Likewise in
d relation to article I of the charge certain facts

have emerged during the course of enquiry which do clearly ^{recast} ~~cast~~ aspersions on the conduct of the applicant. For instance in paragraph 8 of the enquiring authority's report, it has been brought about that a certain payment was made to a certain firm for liftvan for 3600 Kgs against applicant's entitlement for only 1775 Kgs. The excess amount (Roubles 439.10) paid on that account was later returned in Roubles in cash. Yet another payment was made to a firm for insurance cover of Rs.3,57,750 against the applicant's entitlement for Rs.40,000/- only. This time again the difference amount was subsequently returned by the applicant in Roubles in cash. These are material regularities. After a proper consideration of the matter, we are convinced that the enquiring authority has arrived at his conclusion with regard to the guilt of the applicant after a careful and proper evaluation of the material that had become available during the course of the enquiry. We have failed to notice any bias or perversity in the findings reached by the enquiring authority. Similarly, we have not been able to notice any bias in the orders passed by the disciplinary authority which in our view are reasoned and speaking orders. There is thus no merit in the present OA.



4. In the result of the foregoing, the OA is dismissed with no order as to costs.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

/sns/